

Application No.: 10/636,069

Docket No.: 66192-0009

**REMARKS**

Applicant has reviewed the office action dated June 17, 2005, and thanks Examiner Weier for his review of the pending claims. Claims 1-14 and 40 were rejected under 35 U.S.C. § 103, citing U.S. Published Pat. App. 2003/0091698 ("Marlsand"). Applicant has amended claims 1-14 and 40. No new matter has been added. Applicant respectfully requests reconsideration of the present application in view of the above amendment and the following remarks.

All claims are now focused on a wafer "cookie" with a high percentage content of protein that is nevertheless "light and airy," unlike those taught in the prior art. Support for the amendment is found in paragraphs 28, 40 and Examples 1-5. Support for the amendments to claim 7 regarding weight percents is found in Table 2(b). The wafer cookie is not a cracker, like a saltine or a wheat thin. Rather, it is a light and airy cookie, akin to wafers that sandwich a cream filling. See paragraph 40 of the specification.

The inventor and professional chef, James Carl Schmidt, followed the Marlsand recipe in Example 13 of the published application to compare to the wafers described and claimed in the '069 application. Schmidt Decl. ¶¶ 1-4. Schmidt observed that the Marlsand instructions to prepare its high-protein dough called for mixing protein ingredients in the conventional order using conventional techniques. As a result, the Marlsand dough was very gooey, dense and difficult to work with. It must be extruded; it cannot be pumped like the batter that leads to the wafer of the present invention. After baking, the resultant Marlsand cookie was also very dense. The cookie did not have a consistency favorable for use in a wafer application. It was difficult to eat, and not particularly tasty. Schmidt Decl. ¶ 5.

Application No.: 10/636,069

Docket No.: 66192-0009

Conventional techniques of adding protein ingredients to wafer cookie batters, like the ones used in Marlsand, tend to make the batter less manageable and the resulting wafer cookie less desirable in both consistency and taste. Certain protein ingredients tend to absorb water quickly; others less so. Indeed, even adding whole grain ingredients to a wafer cookie batter tends to make the batter stiff and results in an undesirable wafer cookie. Schmidt Decl. ¶ 6.

Nothing in Marlsand teaches one of skill in the art, another professional chef, to carefully design a sequence of adding ingredients to maximize the stability of proteins in such a way that a high-protein wafer batter is light and fluid enough to be pumped into wafer pans and that, when baked, result in light wafer cookies that are high in protein but nevertheless of a desirable wafer consistency and taste. Schmidt Decl. ¶ 7.

Because teachings of Marlsand do not suggest a departure from conventional methods, no modification of Marlsand could lead to a light, airy high-protein wafer cookie as claimed in the present invention. Thus, Marlsand does not make obvious the claims as now recited. Each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

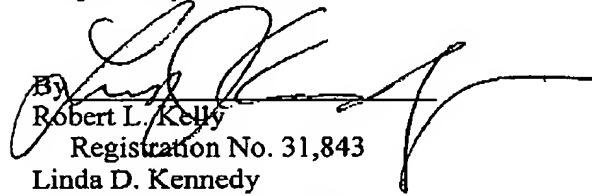
Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 66192-0009 from which the undersigned is authorized to draw.

Application No.: 10/636,069

Docket No.: 66192-0009

Dated: November 17, 2005

Respectfully submitted,

  
By Robert L. Kelly  
Registration No. 31,843

Linda D. Kennedy

Registration No.: 44,183

RADER, FISHMAN & GRAUER PLLC

39533 Woodward Avenue

Suite 140

Bloomfield Hills, Michigan 48304

(248) 594-0619

Attorney for Applicant

R0302188